

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<p>JODI GILL, as Representative and Next Friend of GLENN OSCAR GILL, a Long Term Care Facility Resident, on his behalf and on behalf of all others Similarly Situated</p> <p>and</p> <p>GREG HUBERT, as Representative and Next Friend of NETHIA KNIGHT, a Long Term Care Facility Resident, on her behalf and on behalf of all others Similarly Situated</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">vs.</p> <p>PENNSYLVANIA DEPARTMENT OF HEALTH</p>	<p>Hon. Harvey Bartle</p> <p>Case No. 20-cv-02038</p> <p> CLASS ACTION</p>
--	--

Robert L. Sachs, Jr. Esq. (#41355)
Theresa M. Blanco, Esq. (#77468)
Shrager & Sachs
2300 One Commerce Square
2005 Market Street
Philadelphia PA 19103
rsachs@shragerlaw.com
tblanco@shragerlaw.com
(215) 568-7771

Peter D. Giglione, Esq. (#89523)
Massa, Butler, Giglione
Three Gateway Center
Suite 1543
401 Liberty Avenue
Pittsburgh, PA 15222
(412) 338-1800
pgiglione@mbp-law.com

Attorneys for Plaintiffs and the Class

Martin S. Kardon, Esq. (#26759)
Kanter, Bernstein & Kardon PC
1617 JFK Boulevard, Suite 1150
Philadelphia, PA 19103
215-568-5885
kardon@kbklaw.com

Robert F. Daley, Esq. (#81992)
D. Aaron Rihn, Esq.
Robert Peirce & Associates, P.C.
707 Grant Street, Suite 125
Pittsburgh PA 15219
(412) 281-7229
bdaley@peircelaw.com

Attorneys for Plaintiffs and the Class

**PLAINTIFFS' MOTION FOR CLASS CERTIFICATION & FOR APPOINTMENT OF CLASS
REPRESENTATIVE AND CLASS COUNSEL**

Pursuant to Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure, Plaintiffs Jodi Gill and Greg Hubert respectfully move the Court for an Order:

- a. Certifying a plaintiff class consisting of:

All persons who are residents of long term care facilities (LTCFs) in the Commonwealth of Pennsylvania

- b. Certifying Plaintiffs as the representatives of the Class; and
- c. Designating Shrager & Sachs; Kanter, Bernstein & Kardon, P.C.; Massa, Butler, Giglione; and Robert Peirce & Associates, P.C. as Class Counsel

In support of their Motion, Plaintiffs state:

1. The proposed class meets each of the requirements set forth in Rules 23(a), as well as 23(b)(2).
2. The class consists of thousands of individuals¹, thereby making joinder of all such individuals impracticable.
3. Plaintiffs have alleged numerous questions of law and fact that are common to the Class,

including:

- a. Whether the Pennsylvania Department of Health (PA DOH) has violated the Americans with Disabilities Act and the Rehabilitation Act as a result of their alleged failure to take appropriate actions to safeguard the lives and health of the residents of LTCFs in Pennsylvania (the Class);
- b. Whether PA DOH has violated the Social Security Act (Section 1983 Action) as a result of their alleged failure to take appropriate actions to safeguard the lives and health of the Class;

¹ There are nearly 76,000 nursing home residents in Pennsylvania according to the 2018-2019 data from the State which is the most recent census available.

(<https://www.health.pa.gov/topics/HealthStatistics/HealthFacilities/NursingHomeReports/Pages/nursing-home-reports.aspx> Accessed 5/3/2020).

- c. Whether PA DOH has violated the Patient Protection and Affordable Care Act as a result of their alleged failure to take appropriate actions to safeguard the lives and health of the Class;
 - d. Whether PA DOH has violated the Federal Nursing Home Reform Amendments as a result of their alleged failure to take appropriate actions to safeguard the lives and health of the Class;
 - e. Whether PA DOH has violated the Pennsylvania Disease Prevention and Control Law as a result of their alleged failure to take appropriate actions to safeguard the lives and health of the Class;
 - f. Whether PA DOH has violated common law and constitutional duties as a result of their alleged failure to take appropriate actions to safeguard the lives and health of the Class;
 - g. Whether, as a result of the PA DOH's failure to take appropriate and necessary actions to safeguard the lives, health and safety of the Class, members of the Class have sustained injury or are at imminent risk of sustaining injury.
4. Plaintiffs' claims are typical of the claims of the other members of the proposed Class in that they are residents of LTCFs in Pennsylvania in the same or similar situation as all of the other residents of LTCFs in the State: they are infected with or are in imminent danger of being infected with SARS-COV2 (the virus that causes COVID-19) due, in large part, to the failure of the PA DOH to conduct inspections and its abrogation of its duties to protect those residents from harm.
5. Plaintiffs and their counsel meet the adequacy requirements of Rule 23(a)(4).
6. The proposed Class meets the requirements of Rules 23(b)(2) in that the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.
7. Finally, as more fully described in the Plaintiffs' Memorandum of Law, Shrager & Sachs; Kanter, Bernstein & Kardon, P.C.; Massa, Butler, Giglione; and Robert Peirce & Associates, P.C.

together have decades of experience in Class Action, Civil Rights, Nursing Home, and Negligence actions, and should be collectively appointed as Class Counsel pursuant to Rule 23(g) of the Federal Rules of Civil Procedure. These firms have undertaken significant work in identifying and investigating potential claims in the action, and have substantial experience in these cases and litigation in general. These firms have each committed sufficient resources to adequately represent the Class, and fully understand all matters pertinent to the prosecution of this case.

8. In support of this motion, Plaintiffs have contemporaneously submitted their supporting Memorandum of Law and a Proposed Order.

WHEREFORE, Plaintiff respectfully requests that the Court grant their motion and enter an Order in the form submitted herewith, pursuant to Rules 23(a), 23(b)(2) and 23 (g) of the Federal Rules of Civil Procedure, certifying this action as a class action, certifying Plaintiffs as the class representatives on behalf of the Class, and appointing Shrager & Sachs; Kanter, Bernstein & Kardon, P.C.; Massa, Butler, Giglione; and Robert Peirce & Associates, P.C., as Class Counsel.

Respectfully submitted,

SHRAGER & SACHS

/s/ Theresa M. Blanco

Robert L. Sachs, Jr., Esquire
Theresa M. Blanco, Esquire

On behalf of all Counsel listed

Dated: May 13. 2020